

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

BRIAN DAVID MOON

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CRIMINAL NO. 6:06-CR-33-001

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On March 7, 2007, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant, Brian David Moon. The government was represented by Mary Ann Cozby, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by court-appointed counsel, Ken Hawk.

Defendant originally pleaded guilty to the offense of Felon in Possession of a Firearm, a Class C felony. The offense carried a statutory maximum imprisonment term of ten years. The United States Sentencing Guideline range, based on a total offense level of 19 and a criminal history category of IV, was 46 to 57 months. On January 12, 2004, U.S. District Judge Bruce D. Black sentenced Defendant to 37 months imprisonment, followed by a term of two years supervised release. Under the mandatory conditions of supervised release, Defendant was prohibited, in relevant part, from: committing another federal, state or local crime. Defendant was also to refrain from any unlawful use or illegal possession of a controlled substance, to submit to a drug test within 15 days of release on supervised release, and at least two periodic drug tests thereafter, as directed by the probation officer. Defendant was also subject to special conditions to include participation and successful completion of a program for treatment for drug abuse. On October 19, 2005, Defendant completed the term of imprisonment and began the term of supervised release.

In its petition, the government alleges that Defendant submitted urine specimens which tested positive for methamphetamine on January 5, 2006; January 26, 2006; October 31, 2006; and December 12, 2006. If the Court finds by a preponderance of the evidence that Defendant committed any of these violations, a statutory sentence of no more than two years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Pursuant to Section 7B1.1(a) of the Sentencing Guidelines, violating a condition of supervision by committing the offense of possessing methamphetamine would constitute a Grade B violation, for which the Court shall revoke Defendant's term of supervised release in favor of a term of imprisonment. U.S.S.G. § 7B3.1(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. § 7B1.4(a).

When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment less than the statutory maximum, the Court may require that Defendant be placed on a term of supervised release after imprisonment. 18 U.S.C. § 3583(h). The authorized term of supervised release for this offense is not more than three (3) years. Pursuant to Section 7B1.3(g)(2) of the Sentencing Guidelines, the length of such term shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by possessing methamphetamine as alleged in the government's petition. In exchange, the government agreed to recommend that Defendant serve 15 months in prison with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court RECOMMENDS that Defendant, Brian David Moon, be committed to the custody of the Bureau of

Prisons for a term of imprisonment of 15 months with no supervised release to follow.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 16th day of March, 2007.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE